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09/780,603	02/12/2001	Kirt E. Whiteside	WHS.P0018A	8458

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EXAMINER

RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/780,603
Filing Date: February 12, 2001
Appellant(s): WHITESIDE, KIRT E.

RECEIVED

APR 20 2005

GROUP 3611

Edward G. Greive
Reg. 24,726
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/2/05.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(7) Prior Art of Record

US 4,034,434 A	BLOCK	07-1977
US 4,559,669 A	BONZER et al.	12-1985
US 4,707,880 A	DOYLE et al.	11-1987
US 5,895,062 A	MILES et al.	04-1999

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(8) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles et al. (US 5,892,062 A) and in further view of Bonzer et al. (US 4,559,669 A) and Block (US 4,034,434 A).

With respect to claim 1, Miles et al. discloses a creeper 1 comprising opposed side rails 4-7, a pad 18-20 between said side rails, and a plurality of casters 8-11 attached to a planar bottom surface of said side rails and rotatable about vertical axis located within the profile of the side rails, as shown in figures 1-6. Miles et al. does not disclose the caster wheel as having a hemispherical or semi-elliptical cross-section. Bonzer et al. does disclose a caster with a wheel body 18 having a semi-elliptical cross-section, as shown in figure 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the creeper of Miles et al. with the caster assembly of Bonzer et al. in order to allow the creeper to turn with less force

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exerted by a user due to less friction between the wheel and support surface and to absorb shock.

Neither Miles et al. nor Bonzer et al. disclose the wheel body as having a hardness from about 65 to about 85 Shore durometer type D. Block does disclose a wheel 66 having a hardness of 65/75 Shore D Durometer, as recited in column 3, line 65. It would have been obvious to one having ordinary skill in the art at the time of the invention was to have designed the wheel assembly of Miles et al. as modified by Bonzer et al. with a hardness of 65/75 Shore D Durometer, as taught by Block, in order to prevent wear on the wheel.

With respect to claims 2 and 3, Bonzer et al. discloses the wheel body as having a hub including a axial bore 46, inner rim 45, outer rim 69, and radial supports 47, as shown in figure 2.

3. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles et al., Bonzer et al., and Block, as applied to claim 3 above, and further in view of Doyle et al. (US 4,707,880 A).

None Miles et al., Bonzer et al., or Block disclose the wheel assembly as being selected from the recited materials. Doyle et al. does disclose a caster wheel 28 composed of polyurethane, as recited in column 3, lines 28-29. It would have been obvious to one having ordinary skill in the art at the time of the invention to have composed the caster wheel of the creeper of Miles et al., Bonzer et al., and Block out of polyurethane, as taught by Doyle et al., in order to give the wheel increased durability and decreased weight.

Allowable Subject Matter

4. Claims 7-13 and 16-19 are allowed.

(9) *Response to Argument*

The examiner thanks the appellant's acknowledgment of the typo in the rejection of claims 4 and 5, Gruber had been replaced with Bonzer et al. and Block in the last office action. The examiner has made the appropriate correction to the typo of the rejection of claims 4 and 5.

With respect to the appellant's arguments concerning claims 1-5, the examiner has included a chart illustrating Shore D scale versus Shore A scale in order to illustrate that certain rubbers/polymers/plastics can fall between the applicant's recited range of 65-85 Shore D and also within Bonzer et al.'s range of 50-70 Shore A (see fig. 1). This would warrant that the Bonzer et al. material is capable of falling the recited range, however the examiner has applied the Block reference as evidence of the Shore D scale range being applied to a wheel and the Doyle reference as an example of polyurethane being used to make a wheel, which is considered conventional. Further, the appellant defines the hardness of the wheel body by reciting "when used on a work surface the shape of said wheel body remains substantially unchanged", this could read on any wheel because the deformation of the wheel body is subject to multiple parameters such as, the weight of the load on the creeper, exterior temperatures, hardness of the work surface, etc. Further, the appellant does not recite in the claims that the "entire wheel body" must be composed of the material, therefore the hub of Block reads on the limitation.

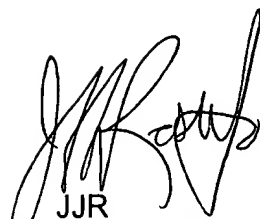
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In conclusion, the applicant's recited limitation defining the hardness of the wheel is not sufficient to overcome the reference of Miles et al. and Bonzer et al. because the deformation of the wheel is subject to numerous exterior parameters and the recited range of the Shore D scale can overlap with the recited Shore A scale of Bonzer et al., and lastly the examiner views the hardening of a material for the sole purpose of decreasing the amount of deformation to the wheel to be an obvious result and not patentable.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey J. Restifo
Examiner
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JJR
April 18, 2005

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